

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 04-6587

DANIEL ALLEN, SR.,

Petitioner - Appellant,

versus

RAYMOND SMITH, Superintendent,

Respondent - Appellee,

and

THEODIS BECK, Secretary of North Carolina
Corrections,

Respondent.

Appeal from the United States District Court for the Eastern
District of North Carolina, at Raleigh. Terrence W. Boyle, Chief
District Judge. (CA-03-503-5-BO)

Submitted: October 18, 2004

Decided: November 18, 2004

Before MICHAEL, TRAXLER, and GREGORY, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Daniel Allen, Sr., Appellant Pro Se. Clarence Joe DelForge, III,
NORTH CAROLINA DEPARTMENT OF JUSTICE, Raleigh, North Carolina, for
Appellee.

Unpublished opinions are not binding precedent in this circuit.
See Local Rule 36(c).

PER CURIAM:

Daniel Allen, Sr., seeks to appeal the district court's order dismissing as untimely his 28 U.S.C. § 2254 (2000) petition. An appeal may not be taken from the final order in a habeas corpus proceeding unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1) (2000). A certificate of appealability will not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2) (2000). A prisoner satisfies this standard by demonstrating that reasonable jurists would find that his constitutional claims are debatable and that any dispositive procedural rulings by the district court are also debatable or wrong. See Miller-El v. Cockrell, 537 U.S. 322, 336 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000); Rose v. Lee, 252 F.3d 676, 683 (4th Cir. 2001).

By failing to challenge in his informal brief the district court's finding regarding timeliness, Allen has waived his right to challenge the district court's dismissal of his § 2254 petition as untimely. 4th Cir. R. 34(b). Moreover, our independent review of the record reflects that his petition was indeed untimely. Accordingly, we deny a certificate of appealability and dismiss the appeal. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED